

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

FILED  
U.S. DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK  
2005 JUN 15 PM 4:11

-PS-O-

---

MAURICE HUGHES

Plaintiff,

05-CV-0397Sr

-v-

MEMORANDUM and ORDER

MELVIN WILLIAMS, Superintendent,  
DR. SOHN, Physician, Fishkill Correctional Facility,  
NURSE SULLIVAN, DR. STORNELLI,  
DR. WALRATH and DEPARTMENT OF  
CORRECTIONAL SERVICES,

Defendants.

---

On February 28, 2005, plaintiff, a former inmate at the Fishkill Correctional Facility and Willard Drug Treatment Campus filed a complaint and application to proceed *in forma pauperis* with the United States District Court for the Northern District of New York. On March 17, 2005, the Northern District of New York (Hon. Lawrence E. Kahn) denied plaintiff's application to proceed *in forma pauperis* as incomplete and directed him to either pay the filing fee or submit a new application along with an amended complaint. On April 15, 2005, plaintiff filed a new application and an amended complaint. On May 24, 2005, District Judge Kahn filed an order dismissing defendant New York State Division of Parole and transferring the amended complaint to this Court because the allegations of deliberate indifference to plaintiff's serious medical need and inadequate medical care arose, in part, at the Willard Drug Treatment Campus, which is located within the Western District of New York. The remaining allegations arose prior to plaintiff's initial release on parole and occurred at the Fishkill Correctional Facility.

Plaintiff's amended complaint against defendant Department of Correctional Services ("DOCS") must be dismissed with prejudice, pursuant to 28 U.S.C. § 1915(e)(2)(B),<sup>1</sup> because DOCS, as an agency of the State of New York, is immune from suit pursuant to the Eleventh Amendment. See *Kentucky v. Graham*, 473 U.S. 159, 166 (1985); see also *Posr v. Court Officer Shield No. 207*, 180 F.3d 409, 414 (2d Cir. 1999) ("An official arm of the state," such as state agencies, "enjoys the same Eleventh Amendment immunity from suit in federal court as is enjoyed by the state itself.").

Accordingly, plaintiff's request to proceed as a poor person is hereby granted and the amended complaint against the Department of Correctional Services is dismissed with prejudice and the Clerk of the Court is directed to terminate said defendant as a party to this action.

The Clerk of the Court is directed to file plaintiff's papers, and to cause the United States Marshal to serve copies of the Summons, Amended Complaint, this Order and the remaining documents forwarded to this Court from the Clerk of the Northern District of New York (Docket No. 7) upon the remaining defendants, Melvin Williams, Dr. Sohn, Nurse Sullivan, Dr. Stornelli and Dr. Walrath, without plaintiff's payment therefor, unpaid fees to be recoverable if this action terminates by monetary award in plaintiff's favor.

SO ORDERED.

DATED: Buffalo, New York  
June 15, 2005

  
\_\_\_\_\_  
JOHN T. ELFVIN  
UNITED STATES DISTRICT JUDGE

---

<sup>1</sup>Section 1915(e)(2)(B) of 28 U.S.C. provides that the Court shall dismiss a case in which *in forma pauperis* status has been granted if, at any time, the Court determines that the action (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.